



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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86 Chambers Street  
New York, NY 10007

January 18, 2018

By ECF:

The Honorable P. Kevin Castel  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *New York Times and Benjamin Protess v. Dep't of Transportation*,  
No. 17 Civ. 7510 (PKC)

Dear Judge Castel:

I am the Assistant United States Attorney assigned to the above-referenced case, an action under the Freedom of Information Act ("FOIA"). My Office represents the United States Department of Transportation ("DOT" or the "government"). With the consent of the plaintiffs, I write respectfully to request a two-week adjournment of the government's time to answer or otherwise respond to the complaint, which currently expires tomorrow, Friday, January 19, 2018. This is the government's fourth request for an extension of the answer date; the previous requests have been granted. We also respectfully request that the Court adjourn the initial conference, which is currently set for January 22, 2018, to a date convenient to the Court that follows the government's answer date.

In brief, plaintiffs' FOIA request seeks certain documents referencing communications between DOT and the Executive Office of the President relating to two rail projects. *See* Complaint ¶ 9. DOT completed an initial search, which yielded no responsive documents, and provided details of the search to plaintiffs. After further discussions, the government conducted a set of follow-up searches of two specific custodians with a different set of search terms. These additional searches were completed earlier this afternoon and yielded a single document that could potentially be responsive to the request. The government is in the process of evaluating this document for responsiveness; if it is determined responsive, it will be processed for applicable exemptions. In addition, because plaintiff's request seeks correspondence with the Executive Office of the President ("EOP"), if the document is responsive, processing it would likely require consulting with EOP, which would require some additional time.

Given the substantial progress the parties have made toward resolving this case without the Court's intervention, we believe it would be most efficient to permit the government a modest extension of two weeks—or until February 2, 2018—to answer or otherwise respond to the complaint. This will afford the government time to evaluate and

process (if necessary) the potentially responsive document, and will also allow the parties to determine whether the case can be consensually resolved without the Court's involvement. Plaintiffs consent to this request. If the Court grants the request, we respectfully request that the Court also adjourn the initial conference, which is currently set for January 22, 2018, at 11:45 am.

I thank the Court for its attention to its consideration of this request.

Respectfully,

GEOFFREY S. BERMAN  
United States Attorney

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